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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/250,834 02/16/99 ROBINSON

M 5079D1-07-LA

EXAMINER

IM71/0502

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CORBIN, A

ART UNIT

PAPER NUMBER

13

1761

DATE MAILED:

05/02/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trad marks**

# Office Action Summary

Application No.

09/250,834

Applicant

ROBINSON ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 3-12-01
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 23-40 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 23-40 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

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1. The request filed on March 14, 2001 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 09/250,834 is acceptable and a CPA has been established. An action on the CPA follows.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 23-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al (4,961,935), Co'ra et al, Reed et al (5,248,508), Yotka et al (WO 95 /08926) or the Food Technology article (page 128).

Each primary reference discloses isomalt or Palatinit in crystalline or solid form. Additionally, Cherukuri et al discloses that the Palatinit provides crunch to chewing gum (col. 13, lines 50-57). Flavoring and colorant may also be included with the isomalt or Palatinit in each primary reference except for the Food Technology article. Finding the optimum particle size of the isomalt particles would require nothing more than routine experimentation by one reasonably skilled in this art.

4. Claims 32-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cherukuri et al, Co'ra et al, Reed et al, Yotka et al or the Food Technology article as applied to claims 23-31 above, and further in view of Tanaka et al.

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It would have been obvious to prepare the isomalt or Palatinit in each primary reference in accordance with applicant's claimed procedure since it is old to prepare a ground isomalt containing mixture by such procedure, as evidenced by Tanaka et al (col. 3, lines 35-43 and col. 4, lines 47-49).


5. Applicant's arguments with respect to claims 23-40 submitted October 23, 2000 have been considered but are moot in view of the new ground(s) of rejection.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can normally be reached on Tuesday - Friday from 9:30 AM to 7:00 PM. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Arthur Corbin/om  
April 30, 2001

  
ARTHUR L. CORBIN  
PRIMARY EXAMINER  
5-1-01